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No. 89-31

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

FRIENDS OF WARWICK POND AND HOXSIE
also WARWICK LAND TRUST, PAUL HULING,
JEANNE M. FOSTER, EILEEN NAUGHTON and
KATHLEEN PREISS

Petitioners

vs

CHILDREN'S FRIEND AND SERVICE, INC.,
FRANK P. SHERRY, R & F ASSOCIATES,
RHODE ISLAND CENTRAL CREDIT UNION and
JOHN DOES, ONE through FIVE

Respondents

and JAMES O'NEIL, in his capacity as
Rhode Island Attorney General

Additional Party — Respondent

Petitioners' Third Reply Brief In Support Of A Writ Of Certiorari To The Supreme Court Of The State of Rhode Island

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QUESTIONS PRESENTED

1. Whether it was plainly untenable and a denial of due process for the R.I. Supreme Court to carve out a new rule denying petitioners standing and apply it retroactively against diligent representative plaintiffs disregarding (a) their demonstrated compliance with the R.I. adopted Federal standing/access barrier test and (b) four prior R.I. Supreme Court decisions and a R.I. statute that the Attorney General, whom the plaintiffs had named at the outset, is but a necessary party to charitable trust litigation.

2. Whether it was plainly untenable, a denial of due process and a violation of Rule 56 of the Rhode Island (Federal) Rules of Civil Procedure to approve the granting of summary judgment on a record which shows (a) that the trial/lower court below's sole ultimate finding was based on a mistaken conception of its decisional authority and (b) that important discovery - addressed to the movants themselves - was still outstanding and (c) that, at most, the defendants had raised merely a mixed question of law and fact.

3. Whether it was plainly untenable and a denial of due process for the R.I. Supreme Court to give weight to a purported R.I. Attorney General opinion (or finding) of "no fault" in the defendants' sale/purchase of the charitable property at issue ("Lakeside") for commercial real estate development which "opinion" (a) was not part of the record, (b) the plaintiffs had never seen, much less been given an opportunity to answer, and (c) whose existence was not asserted until the February 13, 1989 appellate oral argument.

4. Whether the United States Supreme Court will summarily reverse and remand for further proceedings a case which turns on state adopted Federal law (standing, *res judicata* and Rule 56 summary judgment) all patently violated by the courts below, thus depriving representative plaintiffs of their sole means of preventing monetary, recreational and environmental damage to themselves, their homes and their community.

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Additional Party — Respondent

Petitioners' Third Reply Brief In Support Of Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Rhode Island

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Petitioners now reply to the additional party — respondent Rhode Island Attorney General's brief, received by mail on August 13, 1989.*

Summary

The Attorney General's brief is an enigma, replete with omissions and distortions. There is no mention of (1) Lakeside's 1912-16 acquisition with donated funds specially solicited from community members in aid of charitable programs handicapped for lack of permanent location (Petition 4, 23-24, P.A. 11 and 12, 20-23; Petitioners' Second

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*Petitioners' reply to respondent R&F's brief was mailed August 11, 1989. Petitioners' reply to respondent CF&S' brief was mailed August 25, 1989.

Supplemental Appendix, annexed to their reply to CF&S, 6-8 14-26); (2) the initial charitable holder's repeated recognition of its resultant trust responsibilities (Petition 4, 23-24, P.A. 21-23; P.S.S.A. 9-10, 11-17, 22-26) or (3) the R.I. Superior Court's 1951 *cy pres* proceedings in which the Attorney General participated as the sole designated respondent. (Petition 4-5, 24, P.A. 11-12; Petitioners' Third Supplemental Appendix, *infra*, 6)

Regarding petitioners' standing, the Attorney General baldly declares that no injury has been shown. (Brief 7-8) He ignores the petitioners' documented demonstration of substantial, monetary, recreational and environmental damage (Petition 4, 11-14, P.A. 15-16, 23-29; Petitioners' Reply to CF&S 1-2, 4-5, P.S.S.A. 1-5, 14, 16, 18, 20 and 26; P.T.S.A. *infra* 1-2). By claiming that his office has the *sole* right to invoke the judicial process (even when he has declined to do so — as in this case) the Attorney General, (a) misconstrues clear contrary precedents and (b) ignores controlling R.I. statutory and constitutional provisions — which show that he is *not* the sole person who may sue and that making him a party is sufficient. (Petition 6, 8n, 14-16, P.A. 6; Petitioners' Reply to CF&S 5-6)

Regarding summary judgment, the Attorney General disregards Lakeside's 70 years of charitable trust history and use, its longstanding recreational benefit to the surrounding community, his own consent to *cy pres* jurisdiction in 1951*, that the R.I. Superior Court's 1951 *cy pres* decree represents a binding determination that Lakeside was held upon charitable trust (Petition 17-18), the petitioners' outstanding discovery which the movants themselves were resisting or even Rule 56 itself. (Petition 6-8, 17-22).

Regarding his own purported investigation, analysis and findings, which so surprised the petitioners and so impressed the Rhode Island Supreme Court when the subject first surfaced on appellate oral argument last February (Petition 3n, 9-10, 22-23, P.A. 1-3; P.S.S.A. 34-35) and which he declined to clarify in his response to the plaintiffs' February 28 application for reargument (Petition herein 3n, 22n), the Attorney General now *seems* to say that there was no investigation (6), no analysis (6,7) and no written finding or opinion (7). This disclosure should have made below at February 13 appellate oral argument or, at the very least, in the Attorney General's response to the plaintiffs' application for reargument. If such disclosure had been made the result below might well have been different.

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*Provided appropriate proof was presented and, as the decree itself confirms, was in fact given. (Petition 4-5, 24, P.A. 11-12; P.T.S.A. *infra* 6)

The Questions Presented Are Properly Before The Court

Much, if not all of the petitioners' August 25, 1989 reply to CF&S' treatment of this point applies with equal force to the R.I. Attorney General and need not be repeated. (*Id.* 2-4). Petitioners brought this class action* to protect their homes, their neighborhood, their environment, and their quality of life — the most fundamental property and liberty rights which anyone can have (Petition 11). Their demonstration of monetary, recreational and environmental damage, as indicated above, is substantial and fully documented. Yet, the petitioners were shamelessly railroaded. (Petition 2-3, 6-11, 13-14, 17-25). The R.I. Attorney General, citing *Webb v. Webb*, 451 U.S. 493 (1981), says this Court is without power to set straight such fundamental unfairness. He is dead wrong.

Because of the plain error below in breach of federal constitutional standards concerning (1) standing (petition 16-17, 25); (2) the Attorney General's non-record opinion (petition 9-10, 22-25); and (3) the lower courts' handling of Rule 56 summary judgment (petition 18-22, 28), *Webb* gives the Attorney General no help. As Justice Powell, joined by Justice Brennan, noted in his concurring opinion (*Webb, supra* at 502):

> "I joined the Court's opinion with the understanding, however, that the broad statements in it are not to be taken as departing from the rule, reaffirmed just this Term, that the Court has jurisdiction to review plain error unchallenged in the state court when necessary to prevent fundamental unfairness. *Wood v. Georgia*, 450 US 261, 265, n 5, 67 L Ed 2d 220, 101 S Ct 1097 (1981). See also *Vachon v. New Hampshire*, 414 US 478, 38 L Ed 2d 665, 94 S Ct 664 (1974) (finding plain error in an appeal from a state court)."

See also, Wood v. Georgia, 450 U.S. 261, 265n (1981) — cited and quoted in the petitioners' August 25 reply to CF&S (p.4); and *Eddings v. Oklahoma*, 455 U.S. 104, 107 (1982) (O'Connor concurring) cited in the petition at 27-28.

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*The Attorney General erroneously disputes such status. *See*, excerpts from petitioners' amended verified class action complaint, P.T.S.A. *infra* 3-5 and prior excerpts from initial class action verified complaint, P.S.S.A. 36,40.

Denying Petitioners' Standing Was Patently Untenable

The Attorney General's transparent attempt to avoid the application of Rhode Island's adopted federal injury-in-fact standing law by asserting that the petitioners have none, has been noted and refuted, at page 2 *supra* and the sources cited therein. *See also*, the petitioners' reply to CF&S at pages 4-5.

The Attorney General also argues that only his office may sue to enforce charitable trust duties and that all others are disqualified even in situations, like this one, (a) where his office has declined to act and (b) notwithstanding the plaintiffs' demonstration of monetary, recreational and environmental damage. Simply stating this bizarre proposition, refutes it. Certainly, the four principal R.I. Supreme Court cases mentioned (which the petitioners initially cited herein, 18-19) — *Newport Hospital v. Harvey*, 47 R.I. 382, 133 A. 648 (1926), *Powers v. Home for Aged Women*, 55 R.I. 187, 179 A. 610 (1935), *Leo v. Armington*, 74 R.I. 124, 59 A.2d 371 (1948) and *Israel v. National Board of Y.M.C.A.*, 117 R.I. 124, 369 A.2d 646 (1977) — support no such proposition. Indeed, all show that the Attorney General is *not* the sole person who may sue to enforce charitable trust duties and that making him a party, as the petitioners have done, is sufficient.

Most significantly, the Attorney General joins the other respondents in totally ignoring the Rhode Island statute (construed in *Israel, supra*) which the petitioners also cited and reproduced, R.I. Gen. Laws, Section 18-9-5 (Petition 14-15, P.A. 6).* Clearly, Section 18-9-5 (like the foregoing decisions), provides for participation opportunity, nothing more. Having made the Attorney General a party at the outset, the petitioners have done just that.

During the first fifteen months of this litigation, the Attorney General seemed content with his R.I.G.L., Sec. 18-9-5 status. Indeed, in his November 17, 1988 Rule 16(h) pre-briefing statement before

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*Similarly, the Attorney General, like the other respondents, also avoids (a) the collateral reference text authority immediately following R.I.G.L. Section 18-9-5 and the recent decisions in other jurisdictions. (Petition 14-16). The admonition of *Parsons v. Walker*, 28 Ill. App. 3d 517, 328 N.E. 2nd 920, 926 (1975) is especially appropriate here. "('If the "public trust" doctrine is to have any meaning or vitality at all, the members of the public, at least taxpayers who are the beneficiaries of that trust, must have the right and standing to enforce it. *To tell them that they must wait upon governmental action is often an effectual denial of the right for all time.*' (46 Ill. 2d at 341, 263 N.E.2d at 18)." (*Emphasis Added*)

the R.I. Supreme Court, while otherwise adopting the respondents' contentions, the Attorney General expressed no exception to his having been "included as a defendant in Superior Court as well as a co-appellee pursuant to Rhode Island General Law, Sec. 18-9-5." *See* excerpt, P.T.S.A. *infra* 5.

The decision below, which cited no authority, cannot be reconciled with R.I. Gen. Law, Section 18-9-5 or, indeed, Article 1, Section 5 of Rhode Island's own Constitution.*

In summary, the retroactive ruling below depriving petitioners of access to the courts to protect their homes, their neighborhood, their environment, and their quality of life from the misappropriation of community open land — in favor of an insensitive attorney general, who first refused to help and then, during appellate oral argument, abandoned his passive role and became a tellingly effective adversary, is not only "plainly untenable" but also an outrage. Such an unjust result must not be allowed to stand, especially in these crucial environmental times (Petition 12, 16-17).

Rule 56 Summary Judgment Was Patently Untenable

The Attorney General's treatment of this issue (plaintiffs' petition 17-22) is largely obfuscation. The Court will find no mention of Lakeside's 1912-16 acquisition with donated funds specially solicited from community members in aid of charitable programs handicapped for lack of a permanent location (petition 4,7,9,19,23-24, P.A. 11-12, 20-23); the initial charitable holder's repeated recognition of its resultant charitable trust duties (petition 4,7,9,19, 23-24: P.S.S.A. 9-10, 11-17, 22-26); the 1951 R.I. Superior Court *cy pres* proceedings in which the Attorney General was the sole designated respondent (petition 4-5, 24, PA 11-12; P.T.S.A. *infra* 6); or the fact that the R.I. Superior Court's 1951 *cy pres* decree represents a binding determination that Lakeside was held upon charitable trust and thus subject to the Superior Court's continuing mandatory, exclusive jurisdiction. (Petition 4-5, 17-18, 24-25 P.A. 11-12; P.S.S.A. 27-30, 33-34).

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*Section 5. *Entitlement to remedies for injuries and wrongs — Right to justice.* — Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

Similarly, there is no mention of (1) CF&S' repeated admissions of trust title in its initial August, 1987 memorandum or its clumsy, transparent efforts to withdraw them (petition 6-7, 20-21, P.A. 30-31, 42-43); and (2) the respondents' resistance to petitioners' outstanding discovery, including a pending motion to compel production of complete, unexpurgated copies of CF&S' contemporaneous 1950-51 directors minutes (petition 6-7, 18-22) — documents which might be expected to cast light on CF&S' title expectations and admissions. *See, especially,* P.A. 33-41)

Without mentioning Rhode Island's adopted Federal Rule 56 and summary judgment law (Petition 9n), the Attorney General argues that summary judgment was proper by claiming that Superior Court Justice Bourcier made a finding that the 1951 *cy pres* conveyance was in "fee simple, without any charitable restrictions whatever." Judge Bourcier made no such finding (Petition 8n, 17n 20; P.A. 4-5). However, even assuming that he did, the record shows, at best, nothing more than a mixed question of law and fact and thus, improper for summary judgment determination:

1. Even with important discovery demands outstanding the record contains substantial evidence that Lakeside was charitable trust property. (Petition 4, 18-20, 23-24, P.A. 1-12, 21-23; P.S.S.A. 6-8, 8-10, 11-12, 12-13, 14-17, 22-31)

2. The R.I. Superior Court's (Walsh, P.J.) 1951 acceptance and exercise of *cy pres* authority over Lakeside as charitable trust property was, therefore, most appropriate (Petition 4-5, 17-19, 23-24 P.A. 11-12; P.S.S.A. 22-30)

3. Assuming *arguendo* that the Superior Court was mistaken in its 1951 acceptance and exercise of *cy pres* authority on grounds that Lakeside is not "trust property" — a difficult proposition to contemplate in view of the documented historial facts cited above — the Superior Court was without authority to overrule its 1951 *cy pres* decree. (Petition 4-5, 17-19; P.S.S.A. 29-31, 33-34)

4. The Superior Court's exclusive *cy pres* responsibility regarding charitable trust properties like Lakeside, once the court's authority has been invoked, is continuing and mandatory. (Petition 4-5, 24-25; *South Kingstown v. Wakefield Trust Co.*, 48 R.I. 27, 32, 134 A. 815 (1926), quoted at P.S.A. 1; P.S.S.A. 29-31, 33-34)

5. The Superior Court's 1951 *cy pres* decree was an essential link in CF&S' chain of title, as the April 1951 deed declares.

(Petition 4-5, P.A. 11-12, 13-14; Respondent Attorney General's appendix RA-14, first paragraph, lines 8-13; *see, also,* 46 *Am Jur* 2d, *Judgments,* Sec. 541.)

6. CF&S has admitted the *cy pres* source and the trust nature of its title (Petition 6-7, 20-22; P.A. 30-31, 42-44). Its clumsy attempt, after two years silence, to explain a way such admissions is of no help on summary judgment particularly in view of its refusal to produce the contemporaneous records which one would expect to shed light on CF&S' Lakeside title expectations (Petition 21, petitioners reply to CF&S 7).

7. No decision has been found — before this case — and none has been cited by the respondents or the courts below, where once *cy pres* has been invoked, a successor charity's attempt to dispose of the property, unilaterally and without court authority, has been upheld. (Petition 22).

8. In keeping with the R.I. *cy pres* statute (R.I. Gen. Laws Sec. 18-4-1, petition 5) both the February 1951 *cy pres* decree and the court authorized April 1951 deed provided that Lakeside was "...to be *held** [by CF&S] for its general uses and purposes**. (Emphasis added)

*"To hold is defined "a, to have and keep in one's grasp. b, to keep up, support... c, to maintain in a certain position or relationship... d, to keep in reserve or custody..." *The American Heritage Dictionary, Second College Edition* (1982)

**Exclusively charitable (P.A. 11-14); see P.T.S.A. *infra* 2.

9. No respondent has produced a letter, memorandum or other contemporaneous document which shows an intention to convey "fee simple title without any charitable restriction." (Petition 19-21).*

Reliance On An Unpublished Non-Record Attorney General's Opinion Was Patently Untenable

The R.I. Attorney General now *seems* to say that his office made no investigation (brief 6) no analysis (brief 7) and no written finding or opinion (7). This disclosure should have been made below on February 13, 1989 appellate oral argument (when the matter first surfaced — during the Assistant Attorney General's presentation) or, at the very least, in the Attorney General's response, submitted in opposition to the plaintiffs' application for reargument. (See petition herein 3n, 22n). If such disclosure had been made the result below might well have been different. (P.S.S.A. 34-35). Although the Attorney General has still not said just what was done and when, the following record facts are clear:

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*"The Attorney General tries to obscure the foregoing enumerated facts by asserting that the petitioners may not challenge CF&S' purported 1987 transfer because of CF&S' 1963 transfer of a part of Lakeside (apparently without Superior Court authority) to St. Timothy's Church and the Church's re-transfer of a portion thereof to Woloohojian Realty. (Brief 3). This matter was first raised below in March, 1988 by an R&F motion to dismiss on grounds that the petitioners had not joined necessary parties. Petitioners opposed on grounds *inter alia*, that "intervening equities" including the church sanctuary and the several housing units which had since been constructed, citing (*Fitzgerald v. O'Connell* 120 R.I. 24, 386 A.2d 1384 (1978) and *Chase v. Chase,* 20 R.I. 202, 37 A. 80 (1897), but were overruled and directed to serve an amended complaint adding the Church and Woloohojian. In their amended verified complaint, calling attention to such intervening equities, the petitioners asked that the Church's title and Woloohojian's be confirmed. ("One who seeks equity must do equity".)

Eight months later, when the matter came up at pre-briefing conference before the R.I. Supreme Court in November, 1988, the Court suggested that the briefing order provide, as it did, that the plaintiffs by reason of "intervening equities" did not challenge these conveyances. (Respondent R&F appendix, RA-7). This step effectively removed the Church and Woloohojian from the litigation. No one, least of all the Attorney General, took exception. What the Attorney General now seems to say is that two wrongs make a right. It is noted that CF&S' apparent evasion of Superior Court jurisdiction in 1963 did not prevent its claiming additional Lakeside *cy pres* trust property in later years. *See R.I. Hospital Trust v. Israel,* 119 R.I. 298, 377 A.2d 341 (1977). (Neither the foregoing 1977 opinion nor, to petitioners' knowledge, the record in that case, contains any reference to the aforementioned 1963 transfer.)

1. The Attorney General and his office was not notified of the June 12, 1987, back-to-back real estate transactions among respondents CF&S, Sherry and R&F. *See* petitioner Paul Huling's May 19, 1988 affidavit, P.A. 18-19. Indeed, Assistant Attorney General Murray said just that at the November 10, 1987 plaintiff Naughton deposition; the transcript so shows (P.A. 19). (There is no contrary record evidence, a CF&S assertion notwithstanding.).

2. CF&S' August 17, 1987 memorandum below contained the pointed statement that the "administrative arm of the Attorney General Department responsible for the enforcement of charitable trusts has not found cause even to investigate this land transaction." (P.A. 30) CF&S repeated its statement, word-for-word in its April 26, 1988 summary judgment memorandum. (P.A. 42; *see also,* Attorney General's brief 6). Except as immediately hereinafter stated, the record contains no contradiction.

3. It was surprising to the petitioners, at February 13, 1989 appellate oral argument, to hear the Assistant Attorney General say that his office had made inquiry and has prepared an opinion or finding of no fault with CF&S' June 1987 sale of the Lakeside property for private development. During February 13 oral argument and again in its February 23 order/decision, the court below was visibly impressed by these Attorney General statements. (P.A. 1-3) Petitioners so noted in their February 28, 1989 application for reargument (P.S.S.A. 34-35; petition herein 22, 27-28).

4. In their February 28 reargument application, the petitioners stressed that the record contained *no* such opinion or finding and protested the court's below's deference to, if not acceptance of, a thus-far undocumented Attorney General opinion or finding which the petitioners had never seen. (P.S.S.A. 34-35; petition 9-10, 22).

5. The Attorney General had an opportunity to cast light on this matter in his March 13, 1989 memorandum, filed in opposition to the petitioners' February 28 reargument application, but chose to make no mention of the subject. (Petition 3n, 22n). Reargument denial followed shortly. (P.A. 3)

Under these circumstances, the Attorney General should have made full disclosure by promptly filing his opinion/finding and giving the

petitioners an opportunity to respond. If there was no such document, as the Attorney General now seems to say (7), this too should have been fully and promptly disclosed. Maintaining silence was manifestly unfair to the petitioners and denied them due appellate process.

Conclusion

The petitioners brought their class action not for personal gain, but to protect their homes, their neighborhood, their environment and quality of life. They were shamelessly railroaded below. Such fundamental unfairness must not be allowed to stand. As provided in 28 U.S.A. Section 2106, this case should be summarily remanded for completion of the petitioners' pre-trial discovery.

Providence, Rhode Island
September 1, 1989

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PETITIONERS' THIRD SUPPLEMENTAL APPENDIX

Excerpts from Plaintiffs' Supplemental Answers to Defendant's Interrogatories, verified January 24, 1988.

18. Itemize all of the so-called damages, recreational, environmental and monetary allegedly suffered by the Plaintiffs, setting forth the duty owed by Defendant Children's Friend and Service, Inc. to each of the Plaintiffs respectively.

18. *** The recreational value of the property at issue is demonstrated by the multitude of recreational activities — both indoors and outdoors — summarized in the response to Nos. 4 and 5 above to which defendant's attention is again directed. The recreational damage is simply incalculable. The property's facility building has visibly deteriorated since June, 1987.

The environmental damage is even more severe. The Warwick Pond property at issue, particularly when coupled with the adjoining State owned open acreage, is a mid-Rhode Island environmental oasis. The property's flora, fauna, fish, brook tributary/estuary to Narragansett Bay, and its marshlands constitute a biologically unique ecosystem. There is nothing like the Warwick Pond property for miles. Warwick Pond is an environmental enclave bounded as it is by an airport, shopping centers and existing residential development. The phosphorous and other pollutants which would ultimately reach Warwick Pond through the threatened development, could have a devastating effect on its water quality. Development of the Warwick Pond property could set off a biological chain reaction which would ultimately lead to the permanent and irreparable destruction of its natural beauty. The loss of Warwick Pond would adversely impact the quality of life for the entire community.

The environmental importance of the property at issue has been recognized by a host of persons other than the plaintiffs. These include the Audubon Society of Rhode Island whose aforementioned annexed letter to the plaintiff Foster is an excellent summary of the damage which would result from the loss of this unique open space. The plaintiffs adopt the Audubon statement *in toto*.*

*Reproduced in petitioners' appendix herein, P.A. 26-29.

Similar recognition has been provided by the Rhode Island Natural Heritage Preservation Commission and the RI Governor's Advisory Council acting through the Department of Environmental Management. These agencies have evaluated the property at issue on a "natural, scenic, ecological, educational or agricultural" basis and by September 18, 1987 letters informed the plaintiff Warwick Land Trust that, if necessary, some $400,000.00 in State funds and a $250,000.00 loan committment is available to ensure the preservation of this open space in perpetuity. At a special session held September 8, 1987 the RI General Assembly unanimously recognized the vital interest which our entire State has in preserving open space, *as did the Rhode Island electorate in November 3, 1987 (see No. 13 above)* regardless of specific location.

The monetary damage to the plaintiffs and their neighbors, should the defendants proceed with their intended development, will be enormous. Plaintiffs presently believe and estimate that homes on or near Warwick Pond (to the west of Warwick Avenue) would lose at least 10% of their market value. The monetary loss to other Warwick residents and, indeed, the entire City would also be substantial, perhaps incalculable. See annexed Audubon Society letter, fifth paragraph.

Amendment to Children's Friend and Service Articles of Association, January, 1950, annexed to plaintiffs' supplemental answers to interrogatories, verified January 24, 1988.

January Session, 1950.

An act in amendment of the articles of association of Children's Friend and Service, a corporation organized exclusively for charitable purposes, organized pursuant to Article III of Chapter 116 of the General Laws of Rhode Island.

It is enacted by the General Assembly as follows:

Section 1. Children's Friend and Service, and its successor or successors, a corporation operated exclusively for charitable purposes and organized pursuant to Article III of Chapter 116 of the General Laws of Rhode Island, may take and hold in fee simple or any less estate by gift, grant, bequest, devise or otherwise any lands, tenaments or other estate, real or personal, to

an amount in value not exceeding one million dollars.

Section 2. This act shall take effect upon its passage, and all acts of parts of acts inconsistent herewith are hereby repealed.

Excerpt from order following March 14, 1988 hearing directing plaintiffs to file amended complaint naming additional parties.

Order

Defendant R&F Associates ("R&F") motion to dismiss the complaint for alleged failure to join necessary parties and the plaintiffs' objections thereto, following hearing before the Court on March 14, 1988, are disposed of as follows:

1. R&F's aforesaid motion be and hereby is denied provided the plaintiffs, on or before April 1, 1988, prepare, file and deliver to a licensed constable for service, an amended complaint naming Saint Timothy's Church Corporation, Warwick, and Woloohojian Realty Corp, as additional parties;

Excerpts from plaintiffs' verified amended complaint — class action, verified March 30, 1988.

12. Saint Timothy's Church Corporation, Warwick ("the Church"), is a Rhode Island corporation with a rectory at 1799 Warwick Avenue, Warwick. The Church is named as a party pursuant to March 14, 1988 Court ruling and subsequent order and to ensure that complete relief may be granted.

13. Woloohojian Realty Corp. ("Woloohojian") is a Rhode Island corporation with an office at 20 Centerville Road, Warwick. Woloohojian is named as a party pursuant to March 14, 1988 Court ruling and subsequent order and to ensure that complete relief may be granted.

* * *

Count IV — *Declaratory Relief* (The Church and Woloohojian)

65. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 37.

66. During 1963, on its own volition and apparently without Superior Court authority, CF&S deeded a portion of the aforementioned Lakeside (Warwick Pond) real property to the

Church. Upon information and belief, the cash consideration was $117,500.

67. During the ensuing years, the Church constructed a sanctuary and a rectory upon the property.

68. Thereafter, in or about 1969 the Church deeded a portion of the aforementioned real property, described in paragraph 66 above, to Woloohojian for a cash consideration unknown to plaintiffs.

69. Thereafter, commencing in or about 1969, Woloohojian caused garden apartment buildings to be constructed on the parcel described in paragraph 68 above.

70. Neither of the foregoing transactions, referred to in paragraphs 66-69 above, was referred to in the plaintiff's August 4, 1987 verified complaint herein, the answers thereto or, to the plaintiffs' knowledge, any other prior court proceeding.

71. Between the 1963 transfer, referred to in paragraph 66 above and the Court's March 14, 1988 ruling and subsequent order, referred to in paragraphs 12 and 13 above, the following events and intervening equities have occurred:

(a) Twenty five years have passed;

(b) a portion of the aforementioned premises has been re-transferred to another party, i.e. defendant Woloohojian;

(c) a sanctuary and a rectory has been constructed at substantial additional expense to the Church and its members;

(d) garden apartments have been constructed at substantial expense to Woloohojian and/or other persons and in which a sizable number of Warwick residents now make their homes; and

(e) other material events or intervening equities.

72. Without prejudice to the plaintiffs' other claims herein, the Church's title to the real property referred to in paragraph 66 above, and that of its transferees, including Woloohojian, should be confirmed by the Court.

Class Action Allegations

73. As indicated above, plaintiffs bring this action individually and on behalf of all Rhode Island community members, espe-

cially those residing on or near or using Warwick Pond.

74. The total number of all class members is so large that their individual joinder would be impracticable.

75. As residents on or near Warwick Pond, the designated plaintiffs have a special interest in this suit and its diligent pursuit.

76. The questions of law and fact raised herein are common to all members of the class.

77. The claims presented by the designated plaintiffs herein are representative of, if not identical to, the other class members.

78. The designated plaintiffs have and will continue, fairly and adequately, to represent the class in that (a) competent counsel have been retained; (b) they have no potential or actual conflict of interest with other possible members of the class; and (c) they have and will continue to acquire the financial resources to ensure that the interests of the class will not be harmed.

Excerpt from R.I. Attorney General's R.I. Supreme Court Rule 16 (h) Pre-briefing Statement, November 17, 1988.

Appellee's Rule 16(h) Pre-Briefing Statement

Appellee, JAMES E. O'NEIL, in his capacity as Attorney General of the State of Rhode Island, and in his capacity as Administration of Charitable Trusts has been included as a defendant in Superior Court as well as co-appellee pursuant to Rhode Island General Law §18-9-5. This statute requires that the Attorney General shall be notified of all judicial proceedings affecting, or in any manner dealing with, a charitable trust or affecting, or in any manner dealing with, a trustee who holds in trust within the state property given, devised, or bequeathed for charitable, educational or religious purposes, and who administers or is under a duty to administer the property in whole or in part for these purposes within the state, and shall be deemed to be an interested party thereto. Here, appellants, FRIENDS OF WARWICK POND, et al., have alleged a breach of public and charitable trust by co-appellees, CHILDREN'S FRIEND & SERVICE INC., et al.

Family Service, Inc. v. William E. Powers, Attorney General (Providence Co., Eq. No. 21550-1951) Answer of R.I. Attorney General.

Answer of Attorney General
of the State of Rhode Island

William E. Powers, Attorney General of the State of Rhode Island, one of the respondents in the above entitled cause, makes answer to the bill of complaint in said cause or to so much thereof as he is advised it is necessary for him to make answer to, and saving to himself all manner of exceptions to, and benefit of any omissions, uncertainties and imperfections in said bill, says:

1. He has no knowledge or information as to the truth of the allegations of fact contained in said bill and therefore neither admits nor denies the same but leaves the complainant to make such proof as it may be advised.

2. If the allegations of fact contained in said bill shall be proved to be true to the satisfaction of this Court, then, in his judgment, there is no relief asked for in said bill which is contrary to the interests of the State of Rhode Island and the public.

3. WHEREFORE, he submits the rights and interests of said State of Rhode Island and its citizens and public, in so far as such rights and interests may be involved in this cause, to the protection and consideration of this Honorable Court and prays that it may determine the truth of the allegations in said bill and thereupon grant such relief as to it shall deem meet and required by the exigencies of the cause of said complainant.

STATE OF RHODE ISLAND

WILLIAM E. POWERS,
ATTORNEY GENERAL

By:

Signed: ROBERT A. COOGAN
ASSISTANT ATTORNEY GENERAL